IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Appeal No.324-DBA of 2000

Date of decision: 06.02. 2007

State of Punjab.

-----Appellant.

Vs.

Surjit Singh etc.

-----Respondents.

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA

Present: Mr. M.S. Sidhu, Sr. D.A.G, Punjab
for the appellant.

Adarsh Kumar Goel, J.

This appeal has been filed by the State against acquittal of the respondents of the charges under Section 302/201/34 IPC.

Case of the prosecution is that Karnail Singh, deceased was residing with his wife accused Karamjit Kaur. He had entered into partnership with accused Amar Singh and had also purchased a car and a van in partnership. The accused Surjit Singh and his nephew Kulwant Singh used to have drinks alongwith Amar Singh in the house of Karnail Singh. Karamjit Kaur developed illicit relations with accused Surjit Singh, Amar Singh and Kulwant Singh. Amar Singh got the van transferred in his name fraudulently and he also had an eye on the land and money of Karnail Singh. The accused had taken some

money from Karnail Singh for purchasing a plot at Delhi. The deceased Karnail Singh had a grievance and they used to enter into abuses. Two sons and daughter of Karnail Singh were also living with him, who had gone out. On the night of 18.04.1995, when all the three accused Surjit Singh, Amar Singh and Kulwant Singh were taking liquor in the house of the deceased Karnail Singh, where Karamjit Kaur was also present, an altercation took place between the deceased Karnail Singh and the three accused. Karamjit Kaur sided with the three accused. On the next day, Karnail Singh and Karamjit Kaur were not seen in the house. PW-2 Megha Singh, brother of the deceased Karnail Singh, who used to live with Karnail Singh, got suspicious and on 20.04.1995 when he along with Nachhattar Singh, Member Panchayat and Bhajan Singh son of Bogha Singh and Lal Singh son of Kishan Singh, his brother-in-law (sister's husband) were returning home after searching Karnail Singh, then they found his dead body floating near the bank of pond near their house. On seeing this, he was proceeding towards police post and met SI Arjan Singh, PW-6 at Bus stand Ajitwal on 20.04.1995 at 4.35 P.M., who recorded his statement (Exh.PA), on the basis of which, FIR was registered. SI Arjan Singh went to the spot, took out the dead body from the pond, prepared inquest report (Exh.PC), despatched the dead body for post-mortem examination, prepared rough site-plan (Exh.PN) and recorded the statements of Nachhattar Singh, Lal Singh and Bhajan Singh. On 21.04.1995, Sodagar Singh, PW-1, resident of Village Ajitwal met PW-6 Arjan Singh and disclosed that the accused persons had made confession before him that they had killed the deceased Karnail Singh.

On 27.04.1995, Surjit Singh, Lambardar of the village produced all the four accused at the police station and he also claimed that the accused confessed their guilt before him. Amar Singh, accused made a disclosure statement that he had kept concealed one Safa (piece of cloth) under the heap of woods in his residential house. This led to recovery of Safa Exh.P-1. After investigation, the accused were challaned.

The accused denied the charges and claimed trial.

Prosecution examined PW-1 Sodagar Singh to prove extra-judicial confession; Megha Singh, PW-2; Dr. Prem Singh, PW-3 to prove post-mortem report; Harjit Kaur, PW-4 to prove sale-deeds (Exh.PG and Exh.PH); PW-5 Surjit Singh, Lambardar, who produced the accused persons before the police and deposed to extra-judicial confession made by the accused persons before him; PW-6 Arjan Singh, the Investigating Officer and PW-7 Balwinder Singh, a formal witness.

The accused persons denied the prosecution allegations.

After considering the evidence on record, the trial Court held that the case of the prosecution was not proved beyond reasonable doubt and acquitted the respondents, inter-alia, for the following reasons:-

(i) Evidence of last seen, furnished by PW-2 Megha Singh, brother of the deceased Karnail Singh, was not reliable. According to Megha Singh, three accused persons had illicit relations with Mrs. Karamjit Kaur wife of the deceased and the said accused persons also wanted to grab the

property of the deceased. If that was so, there was no reason for the deceased to allow the said three persons to come to his house and take liquor at his house. Megha Singh also did not intervene when he saw the altercation on 18.04.1995, as alleged by him. He did not lodge any report on the 19th about missing of Karnail Singh from his house. Karnail Singh had been sentenced life imprisonment in a murder case as disclosed by PW-1 Sodagar Singh.

(ii) Evidence regarding motive was also not reliable. PW-2 Megha Singh could not be believed for the allegation that Karamajit Kaur had illicit relations. She was a mother of three children and the fact that all the three accused were allegedly coming to the house of Karnail Singh and having drinks with him, contradicted the allegation. Allegation of partnership of the deceased with Amar Singh was also not substantiated.

(iii) Evidence of extra-judicial confessions, furnished by PW-1 Sodagar Singh, was not reliable. Sodagar Singh was related to the accused and had cordial relations with Megha Singh, PW-2. He was a convict for murder of his brother. He did not disclose the extra-judicial confession immediately and made a statement only on 21.04.1995. The manner of extra-judicial confession narrated by him was not reliable.

(iv) Evidence of PW-5 Surjit Singh regarding extra-judicial confession, was also not reliable. There was no occasion by the accused to repose confidence in him. He was also a relative of the deceased and was not associated with the accused in any manner.

(v) Evidence regarding absence of Karamjit Kaur from her house from 19.04.1995 onwards, was not reliable.

(vi) According to medical evidence, the deceased died on account of consumption of Alluminium Phosphite, but there was no struggle mark on his body, which does not corroborate the prosecution version, of the accused having killed the deceased.

(vii) Evidence of recovery of Safa at the instance of Amar Singh, was not reliable. Amar Singh would not have carried the evidence of crime to his own house.

We have heard learned counsel for the State and perused the record.

It is well-settled that in absence of direct evidence, conviction can be founded on circumstantial evidence, if circumstances pointing to the guilt of the accused, are clearly proved and chain of circumstances excludes all possibilities of innocence of the accused. In the present case, it is not so. Reasons given by the trial Court are cogent reasons and it cannot be held that the said reasons are unreasonable or arbitrary or perverse. Learned counsel

for the State has not been able to point out any piece of evidence which has not been duly considered by the trial Court.

Scope of appeal against acquittal has been gone into by the Hon'ble Supreme Court, inter-alia, in ***Jaswant Singh v. State of Haryana,*** AIR 2000 SC 1833, wherein it was observed:-

> "21**.** The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the order is clearly unreasonable it is a compelling reason for interference (see *Shivaji Sahabrao Bobade* v. *State of Maharashtra,* (1973 2 SCC 793: AIR 1973 SC 2622: (1973 Cri LJ 1783)). The principle was elucidated in *Ramesh Babulal Doshi* v. *State of Gujarat,* (1996) 9 SCC 225: 1996 AIR SCW 2438: AIR 1996 SC 2035 (1996 Cri LJ 2867):
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> > "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions."

In these circumstances, no case is made out for interfering with the acquittal of the respondents.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

February 06, 2007 **(H.S. BHALLA)**
ashwani **JUDGE**